These are the tentative rulings for civil law and motion matters set for Thursday, March 24, 2011, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument is given to all parties and the court by 4:00 p.m. today, Wednesday, March 23, 2011. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense. Pursuant to Local Rule 20.2.3(A), oral argument shall not exceed 5 minutes per side.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MARGARET E. WELLS AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. M-CV-0046210 Garrison Property, et al vs. Pierce, Cory Robert, et al

The motion for determination of good faith settlement is denied without prejudice.

The motion is purportedly brought on behalf of defendant Bryan Pack, a minor, and Kenneth Pack, as Bryan's father. However, there is no order in the court's file appointing Kenneth Pack as guardian ad litem for Bryan, which order is required to allow Kenneth to settle the case on behalf of his son. The court notes that, if Bryan is 14 years old or older, a petition for appointment of guardian ad litem must be signed by him per CCP 373(b).

2. M-CV-0049770 U.S. Bank, N.A. vs. Magdaleno, Catalina L.

Defendant’s demurrer is overruled. Factual disputes are not valid grounds for a demurrer. Defendant’s request for judicial notice is granted as to the Notice of Default and Trustee’s Deed; the request for judicial notice is denied as to the unrecorded Deed of Trust.

Defendant shall file and serve her answer by March 29, 2011.

3. S-CV-0020656 Ioppolo, Gary et al. vs. Smith, Charley D.

This tentative ruling is issued by the Hon. Charles D. Wachob. If oral argument is requested, it shall be heard March 24, 2011, 8:30 a.m., in Department 42.

Plaintiffs’ unopposed motion for an award of costs and fees incurred on appeal is granted. As prevailing party on appeal, plaintiffs are entitled to recover reasonable attorney fees pursuant to Civil Code section 1717. Additionally, in affirming the trial court’s decision, the Court of Appeal awarded plaintiffs their costs on appeal. Plaintiffs are awarded attorney fees in the amount of $26,918.50. The amount of fees has been reduced from the requested amount to reflect the actual amount of fees ($4,247.50) incurred in plaintiffs’ preparation of this motion, as shown in the billing statements attached to the Schrimp de la Vergne declaration. As the motion was unopposed, no additional fees should be incurred in connection with this motion. Plaintiff is

also awarded costs in the amount of $1,494.17, as reflected in the timely-filed memorandum of costs.

4. S-CV-0021972 Osborne, Ramey, et al vs. Self, Dallas L., et al

Defendants' motion to expunge lis pendens is granted. Summary judgment has been granted on the complaint and therefore there is no action pending involving a real property claim. Although plaintiff has attached a copy of a withdrawal of the lis pendens, there is no indication that that withdrawal has been recorded.

Defendants are awarded attorneys' fees against plaintiffs in the amount of $1,440, per CCP 405.38.

5. S-CV-0025680 Hawkins, Philip E., et al vs. Brown, Robert A., et al

The motion to compel is continued, on the court's motion, to April 12, 2011, 8:30 a.m., in Department 32 to be heard by the Hon. Colleen M. Nichols.

6. S-CV-0025696 J.C. Construction Innovations, Inc. vs. Pinney, Russell Jan,

Plaintiff's motion to compel responses to requests for production of documents from defendants Pinney is granted. Verified responses, without objections, and responsive documents shall be served by April 22, 2011. Sanctions are awarded to plaintiff against defendants Pinney only in the amount of $640.

7. S-CV-0025936 Smith, Preston et al vs. Martinez Hay & Feed et al

The motion of attorney Mary Polansky-Gravatt to withdraw as attorney of record for plaintiffs is granted. Withdrawal will be effective upon service of the signed order on the clients.

8. S-CV-0026342 Aghazadeh, Shahin vs. Kaiser Foundation Health Plan, Inc.

The motion to remove attorney was dropped by the moving party.

9. S-CV-0026624 DeFreece, Darin, et al vs. The City of Roseville, et al

As an initial matter, Roseville Police Department is merely a department of the City of Roseville and so is not properly named as a separate Defendant. Additionally, Plaintiffs named "Roseville City Manager, an entity of unknown origin" as a separate Defendant, but this appears to be merely the title of a City of Roseville employee and not a separate entity and so is also not properly named as a separate Defendant. Therefore, any reference to Defendant City of Roseville in the rulings below includes Defendants Roseville Police Department and Roseville City Manager.

Motion as to plaintiff DeFreece

Defendants' motion for summary judgment as to Plaintiff DeFreece is denied. Defendants' motion for summary adjudication as to Plaintiff DeFreece is granted in part and denied in part.

The motion for summary adjudication is granted as to Defendant Craig Robinson, who is named both as an individual and in his capacity as Roseville City Manager, in that none of the causes of action in the complaint are directed to him and there are no factual allegations in the complaint as to him. The pleadings delimit the scope of the issues to be resolved on summary judgment. Turner v. State of California (1991) 232 Cal.App.3d 883, 891. Additionally, Plaintiff DeFreece did not oppose the motion to the extent that summary adjudication as to Defendant Robinson was sought, and therefore impliedly conceded that summary adjudication was appropriate as to Defendant Robinson.

The motion for summary adjudication is also granted with respect to Defendant Blair. Again, Plaintiff DeFreece did not oppose the motion to the extent that summary adjudication as to Defendant Blair was sought and therefore impliedly conceded that summary adjudication was appropriate as to Defendant Blair.

The motion for summary adjudication is granted with respect to the 5th cause of action for intentional infliction of emotional distress. Again, Plaintiff DeFreece did not address this cause of action in his opposition, and therefore impliedly conceded that summary adjudication is appropriate as to this cause of action .

The motion for summary adjudication is denied with respect to the 1st, 2d, and 3d causes of action for harassment based on sexual orientation and perceived sexual orientation and for failure to prevent harassment. Defendants argue that the 1st and 2d causes of action are time-barred because many of the incidents on which the complaint is based occurred more than one year prior to when Plaintiff DeFreece filed his complaint with DFEH on October 20, 2009. Defendants further argue that the incidents complained about are not sufficient to establish a hostile work environment. However, Plaintiff has submitted evidence that creates a triable issue of fact as to whether the continuing violation doctrine would apply such that the incidents occurring prior to Oct. 20, 2008 could be considered in determining if a hostile work environment existed. Plaintiff's additional material facts 1, 4, 5, 19, 24, 26, 29, 32, 36, 38, 42, 62, 65, 66, and 67. That same evidence creates a triable issue of fact as to whether the incidents were sufficiently severe and pervasive as to create a hostile work environment. Since a triable issue of material fact exists as to the 1st and 2d causes of action, the motion must be denied.

As to the 3d cause of action for failure to prevent harassment, Defendants argue that since no actionable harassment occurred, this cause of action also fails. However, as stated above, there is a triable issue of fact as to whether actionable harassment exists. Defendants also argue that the City took reasonable steps to handle the complaints made by Plaintiff. Defendants point to the anti-harassment policy that exists, to the sexual harassment training that was conducted after Plaintiff made a complaint about the 1369 gate code, that the 1369 gate code was changed, and to the investigation by an independent employment attorney into the 2009 complaints by Plaintiff. However, Plaintiff has submitted evidence that raises a triable issue of fact as to whether the training and independent investigation were adequate. See Plaintiff's additional material facts numbers 6, 7, 34, and 35. Thus, the motion must be denied as to the 3d cause of action also.

As to the 4th cause of action for retaliation, Defendants only submitted evidence that the suspension of Plaintiff DeFreece was for a legitimate business reason. The complaint alleges other actions in support of this cause of action and Plaintiff submitted evidence of other actions which could be determined to be retaliation under FEHA. Yanowitz v. L'Oreal USA, Inc (2005) 25 C4th 1028, 1051 (adverse employment action materially affects the terms, conditions or privileges of employment). See Plaintiff's additional material facts numbers 59, 60, 61,74,

and 75. Because a triable issue of fact exists with respect to whether the other incidents constitute retaliation, the motion must be denied as to the 4th cause of action.

The motion is also denied as to Defendant Newton. Many of the incidents identified by Plaintiff in support of the harassment cause of action were committed by Defendant Newton. Thus, there is a triable issue of fact as to whether Defendant Newton created a hostile work environment.

Defendants' objections to Plaintiff's evidence in opposition to this motion numbers 1, 2, 3, 5, 6, 9, 11, 12, 13, 19, 22, 25, 26, 28, 29, 30, 31, 32, 33, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 55, 57, 58, 59, 60, and 64 (as to DeFreece deposition 104:01-04 only) are sustained. The remaining objections Plaintiff's evidence in opposition to this motion are overruled.

Motion as to plaintiff Lackl

Defendants' motion for summary judgment as to Plaintiff Lackl is denied. Defendants' motion for summary adjudication as to Plaintiff Lackl is granted in part and denied in part.

The motion for summary adjudication is granted as to Defendant Craig Robinson, who is named both as an individual and in his capacity as Roseville City Manager as none of the causes of action in the complaint are directed to him and there are no factual allegations in the complaint as to Defendant Robinson. The pleadings delimit the scope of the issues to be resolved on summary judgment. Turner v. State of California (1991) 232 Cal.App.3d 883, 891. Additionally, Plaintiff Lackl did not oppose the motion to the extent that summary adjudication as to Defendant Robinson was sought and therefore impliedly conceded that summary adjudication was appropriate as to Defendant Robinson.

The motion for summary adjudication is also granted with respect to Defendant Blair. Again, Plaintiff Lackl did not oppose the motion to the extent that summary adjudication as to Defendant Blair was sought and therefore impliedly conceded that summary adjudication was appropriate as to Defendant Blair.

The motion for summary adjudication is granted with respect to the 5th cause of action for intentional infliction of emotional distress to Defendant City of Roseville. Again, Plaintiff Lackl did not address this cause of action with respect to Defendant City of Roseville in his opposition and therefore impliedly conceded that summary adjudication is appropriate as to this cause of action.

The motion for summary adjudication is denied with respect to the 1st, 2d and 3d causes of action for harassment based on sexual orientation and perceived sexual orientation and for failure to prevent harassment. Defendants argue that the 1st and 2d causes of action are time-barred because many of the incidents on which the complaint is based occurred more than one year prior to when Plaintiff Lackl filed his complaint with DFEH on October 20, 2009. Defendants further argue that the incidents complained about are not sufficient to establish a hostile work environment. However, Plaintiff has submitted evidence that creates a triable issue of fact as to whether the continuing violation doctrine would apply such that the incidents occuring prior to October 20, 2008 could be considered in determining if a hostile work environment existed. Plaintiff's additional material facts 79, 81, 82, 83, 84, 88, 89, 90, 92, and 93. That same evidence creates a triable issue of fact as to whether the incidents were sufficiently severe and pervasive as to create a hostile work environment. Since a triable issue of material fact exists as to the 1st and 2d causes of action, the motion must be denied.

As to the 3d cause of action for failure to prevent harassment, Defendants argue that since no actionable harassment occurred, this cause of action also fails. However, as stated above,

there is a triable issue of fact as to whether actionable harassment exists. Defendants also argue that the City took reasonable steps to handle the complaints made by Plaintiff. Defendants point to the anti-harassment policy that exists, to the sexual harassment training that was conducted after Plaintiff made a complaint about the 1369 gate code, that the 1369 gate code was changed, and to the investigation by an independent employment attorney into the 2009 complaints by Plaintiff. However, Plaintiff has submitted evidence that raises a triable issue of fact as to whether the training and independent investigation were adequate. See Plaintiff's additional material facts numbers 132, 133, and 137. Thus, the motion must be denied as to the 3d cause of action also.

As to the 4th cause of action for retaliation, Defendants only submitted evidence that the reprimand and termination of Plaintiff Lackl were for legitimate business reasons. The complaint alleges other actions in support of this cause of action and Plaintiff submitted evidence of other actions which could be determined to be retaliation under FEHA. Yanowitz v. L'Oreal USA, Inc (2005) 25 C4th 1028, 1051 (adverse employment action materially affects the terms, conditions or privileges of employment). See Plaintiff's additional material facts numbers 97, 98, 106, 108, 112, 129, 130, 148, and 149. Because a triable issue of fact exists with respect to whether the other incidents constitute retaliation, the motion must be denied as to the 4th cause of action.

The motion is also denied as to Defendant Newton. Many of the incidents identified by Plaintiff in support of the harassment and retaliation causes of action were committed by Defendant Newton. See Plaintiff's additional material facts numbers 81, 92, 93, 106, 108, and 148, Thus, there is a triable issue of fact as to whether Defendant Newton created a hostile work environment. As to the 5th cause of action for intentional infliction of emotional distress, the Government Claims Act and exclusive workers' compensation remedy do not apply to Defendant Newton as an individual. Additionally, the same facts which create a triable issue of fact as to whether Defendant Newton created a hostile work environment, as well as many of the facts in support of the retaliation cause of action also create a triable issue of fact as to whether those same actions were extreme and outrageous conduct.

Defendants' objections to Plaintiff's evidence in opposition to this motion numbers 1, 2, 4, 5, 6, 8, 9, 10, 11, 19, 21, 25, 28, 29, 32, 34, 35, 36, and 38 are sustained. The remaining objections Plaintiff's evidence in opposition to this motion are overruled.

Motion as to plaintiff Marler

Defendants' motion for summary judgment as to Plaintiff Marler is denied. Defendants' motion for summary adjudication as to Plaintiff Marler is granted in part and denied in part.

The motion for summary adjudication is granted as to Defendant Craig Robinson, who is named both as an individual and in his capacity as Roseville City Manager as none of the causes of action in the complaint are directed to him and there are no factual allegations in the complaint as to Defendant Robinson. The pleadings delimit the scope of the issues to be resolved on summary judgment. Turner v. State of California (1991) 232 Cal.App.3d 883, 891. Additionally, Plaintiff Marler did not oppose the motion to the extent that summary adjudication as to Defendant Robinson was sought and therefore impliedly conceded that summary adjudication was appropriate as to Defendant Robinson.

The motion for summary adjudication is also granted with respect to Defendant Blair. Again, Plaintiff Marler did not oppose the motion to the extent that summary adjudication as to Defendant Blair was sought and therefore impliedly conceded that summary adjudication was

appropriate as to Defendant Blair.

The motion for summary adjudication is granted as to the 4th cause of action for retaliation. Plaintiff Marler has presented no evidence that he suffered any adverse employment action subsequent to his engaging in any protected activity.

The motion for summary adjudication is granted with respect to the 5th cause of action for intentional infliction of emotional distress. Again, Plaintiff Marler did not address this cause of action with respect to Defendant City of Roseville in his opposition and therefore impliedly conceded that summary adjudication is appropriate as to this cause of action. As to Defendant Newton, Plaintiff Marler has presented no evidence of any comments by Defendant Newton that were heard by Plaintiff other than an unspecified comment about Plaintiff being in a garden tub with others. Plaintiff's additional material fact number 170. This single comment is insufficient as a matter of law to constitute extreme and outrageous conduct required to support a cause of action for intentional infliction of emotional distress.

The motion for summary adjudication is granted with respect to the 6th cause of action for public disclosure of private facts. Again, Plaintiff Marler did not address this cause of action in his opposition and therefore impliedly conceded that summary adjudication is appropriate as to this cause of action.

The motion for summary adjudication is denied with respect to the 1st, 2d and 3d causes of action for harassment based on sexual orientation and perceived sexual orientation and for failure to prevent harassment. Defendants argue that the 1st and 2d causes of action are time-barred because many of the incidents on which the complaint is based occurred more than one year prior to when Plaintiff Marler filed his complaint with DFEH on October 20, 2009. Defendants further argue that the incidents complained about are not sufficient to establish a hostile work environment. However, Plaintiff has submitted evidence that creates a triable issue of fact as to whether the continuing violation doctrine would apply such that the incidents occuring prior to October 20, 2008 could be considered in determining if a hostile work environment existed. Additionally, Defendants' own evidence shows that anti-gay comments were made in Plaintiff's presence. See Defendants' undisputed material facts numbers 51, 57, 60; Plaintiff's response to Defendants undisputed material facts 26; Plaintiff's additional material facts 175, 197, 202. That same evidence creates a triable issue of fact as to whether the incidents were sufficiently severe and pervasive as to create a hostile work environment. Since a triable issue of material fact exists as to the 1st and 2d causes of action, the motion must be denied.

As to the 3d cause of action for failure to prevent harassment, Defendants argue that since no actionable harassment occurred, this cause of action also fails. However, as stated above, there is a triable issue of fact as to whether actionable harassment exists. Defendants also argue that the City took reasonable steps to handle the complaints made by Plaintiff. Defendants point to the anti-harassment policy that exists, to the sexual harassment training that was conducted after Plaintiff made a complaint about the 1369 gate code, that the 1369 gate code was changed, and to the investigation by an independent employment attorney into the 2009 complaints by Plaintiff. However, Plaintiff has submitted evidence that raises a triable issue of fact as to whether the training and independent investigation were adequate. See Plaintiff's responses to Defendants' undisputed material facts 38; Plaintiff's additional material facts numbers 188 and 190. Thus, the motion must be denied as to the 3d cause of action also.

Defendants' objections to Plaintiff's evidence in opposition to this motion numbers 3, 4,

5, 6, 9, 11, 13, 23, 25, 26, 28 (as to the 2d sentence only), 29, 33, 36, and 37 are sustained. The remaining objections Plaintiff's evidence in opposition to this motion are overruled.

The court has received defendants' application to seal certain materials submitted with respect to these motions. That application is granted. Defendants shall submit a separate order with respect to this application.

10. S-CV-0027296 Engbrecht, Lauralyn A. vs. Engbrecht, Michael H., et al

Defendants Michael Engbrecht, James Engbrecht, Carol Engbrecht, Steven Engbrecht and Robin Engbrecht's demurrer to the 6th and 7th causes of action in the second amended complaint is sustained without leave to amend. The purchase money loan anti-deficiency bar set forth in CCP §580b precludes Plaintiff from pursuing these causes of action. Contrary to Plaintiff's assertion, the limited exception to the application of CCP §580b does not apply in this case. The WestAmerica loan, by Plaintiff's own admission, was not used to construct improvements which caused a pronounced change in the use of the property. See Thompson v. Allert (1991) 233 Cal.App.3d 1462, 1466, *cited with approval in* DeBerard Properties, Ltd v. Lim (1999) 20 Cal.App.4th 659, 665-666 (exception to CCP §580b only applies when a subordination agreement signals a pronounced change in the use to which the property is devoted).

As Plaintiff cannot amend her complaint to allege facts which would support an application of the Spangler exception to CCP §580b, the demurrer is sustained without leave to amend.

11. S-CV-0027416 Dispensing Solutions Inc. vs. Vantagerx Dispensing Services

Plaintiff's motion to compel further responses to form interrogatory 15.1 is granted. Although that interrogatory does not, as plaintiff argues, require a defendant to essentially prepare a verified answer, it does require a defendant to identify each denial of a material allegation. Defendant has not done so here. Further verified responses without objections shall be served by April 22, 2011.

Sanctions are awarded to plaintiff in the amount of $640 against defendant and its attorney, jointly and severally.

12. S-CV-0028072 Murri, Ted, et al vs. Calugay, Alejandro

The motion for leave is dropped: this case was dismissed by plaintiff.

13. S-CV-0028216 North Tahoe Station Inc., et al vs. Valley Business Bank, et

Defendant Valley Business Bank's petition to compel arbitration and for stay is granted. This action is stayed pending the outcome of the arbitration. However, the court's order of December 16, 2010, enjoining the foreclosure, and the conditions stated therein shall remain in full force and effect. This matter is set for an OSC re status of arbitration on October 18, 2011, at 11:30 a.m. in Department 40.

To the extent that defendant is seeking a change of venue, that request is denied without prejudice, in that the notice of motion does not contain such a request.

If oral argument is requested on this matter, defendant's attorney's request to appear by telephone is granted. The court will contact counsel when the matter is called for hearing.

14. S-CV-0028250 Fuller, Robert vs. Wells Fargo Bank, N.A., et al

Defendants' Wells Fargo and Golden West Savings Assn Service's demurrer is dropped. A first amended complaint has been filed.

15. S-CV-0028392 Bank of America, N.A. vs. Vilchitsa, Aleksandr

The application for writ of possession was dropped by moving party; a new hearing date of August 25, 2011, was reserved.

16. S-CV-0028674 Sweeney, Denise, et al vs. American Brokers Conduit, et al

The OSC re preliminary injunction is continued, on the court's motion, to April 14, 2011, 8:30 a.m., in Department 42 to be heard by the Hon. Charles D. Wachob. Any temporary orders shall remain in effect until the new hearing.

17. T-CV-0001685 Gold, Damon, et al vs. Bank of America, N.A., et al

Plaintiffs' application for preliminary injunction is continued, on the stipulation of the parties, to March 29, 2011, at 8:30 a.m. in Department 40. All temporary orders, if any, shall remain in effect till that time.

This concludes the tentative rulings for civil law and motion matters set for Thursday, March 24, 2011, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument is given to all parties and the court by 4:00 p.m. today, Wednesday, March 23, 2011. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense. Pursuant to Local Rule 20.2.3(A), oral argument shall not exceed 5 minutes per side.